

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, et al.

Plaintiffs

v.

STATE OF TEXAS, et al.

Defendants

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CIVIL ACTION NO.

5:11-CV-0360-OLG-JES-XR

[Lead Case]

PEREZ PLAINTIFFS' PROPOSED FINDINGS OF FACT

The Perez Plaintiffs hereby submit their Proposed Findings of Fact as follows:

1. The Texas House of Representatives is composed of 150 members, a numerically ideal house seat would be 167,637.
2. Following the 2010 Census, the legislative plan ultimately allocated 24 seats to Harris County; 14 seats to Dallas County; and 10 seats to Tarrant County. These were single member districts all contained within the county boundaries. The redistricting chair had initially announced that Harris would receive 25 seats rounding up as had been done in the last redistricting process. (2014 House Tr. Vol. 4 at 1295.)
3. The two principal architects of the House Redistricting plan were staffers Ryan Downton and Gerardo Interiano. Their instruction from Chairman Solomons was to draft plans that would “re-elect as many Republicans as possible.” (2011 Tr. Vol. 4, 995-997.)
4. Partisanship, along with racial line drawing, was an animating force of the redistricting effort. The State concedes that “...protecting Republican incumbents was a partisan goal in all of these maps” as well as to “increase the number of Republican districts.” (Perez Ex. 136; 2014 Congressional Tr. Vol. 7 at 2080.)

5. The State House Plan 283 was drawn on the assumption that a 10 percent population deviation was acceptable and “no effort” was made to minimize deviation within the whole counties or in the state as a whole. (2011 Tr. Vol. 6 at 1473-1474.)

6. David Hanna of the Texas Legislative Council specifically cautioned the legislature regarding the *Larios* decision and the limitations it imposed upon the so-called 10 percent safe harbor. (Perez Ex. 132.) Advising “make sure that deviations ... do not consistently advantage or disadvantage one or more... racial or ethnic or political parties.” In drafting the House Plan, the legislative drafters ignored this warning assuming they had a 10 percent safe harbor for population deviations to accomplish partisan gerrymanders and to the consistent disadvantage of minority voters. Hanna further advised the Legislature “ensure that all deviations are justified by a legitimate, consistently applied policy...” The Court has heard hours of testimony from the principal architects of the House plans, and has heard no evidence explaining justification for deviations within the urban multi-district counties.

7. One method of achieving their partisan goal by manipulation of minority voters is reflected by the November 19, 2010, memo from Eric Opiela to Interiano:

On November 19, 2010, while still employed by the Speaker, Opiela wrote in an email that a useful metric would be to calculate for every Census block “a ratio of Hispanic CVAP/Total Hispanic Population, a ratio of Spanish Surname RV/Hispanic CVAP, and ratio of Spanish Surname RV/Total Hispanic Population.” DX 304 (email); Tr. at 54:12-20 (Jan. 17 p.m.) (Interiano). According to Opiela, “[i]t also would be good to calculate Spanish Surname Turnout/Total Turnout ration for the 2006-2010 General Elections for all VTDs (I already have the data for this for 2006-2008 in a spreadsheet, just need to gather it for every VTD for 2010.)” (2014 House Tr. Vol. 5 at 1536-1537.)

The treatment of HD 117 in Bexar County is one example of the use of this tactic.

8. The growth rates of Texas minority communities were dramatic over the last decade. The Latino population grew by 2,791,255 and represented 65% of the state’s population

increase; African-American population grew by 522,570, representing 12.2% of the growth; Asian population grew by 393,981; and Anglo growth was 464,032. The State's minority population growth would equal 25 State House seats. Despite this overwhelming growth, the State House Plan 283 actually reduced the number of effective minority seats. This was achieved by: a) excessive packing of minority population into existing effective seats; b) cracking areas of minority urban growth and dispersing minority population into multiple districts; c) using population deviation to overpopulate minority districts in some instances; and d) in other instances using population deviation to underpopulate districts for partisan gain. The most egregious example is District 41 in Hidalgo County. (Martin Report, Joint Ex. 5.)

9. Dr. Kousser testified and submitted a lengthy report in which he concluded regarding the House plan: "...the districts have wide population disparities that are strongly correlated with partisan and racial concentrations. More minority than Anglo districts are overpopulated, both in the state as a whole and within the large urban counties." (Kousser Declaration at 106, Joint Ex. 2.) He testified that "the population disparities are clearly correlated with partisanship and ethnicity. Latinos are disproportionately disadvantaged....the plan's deviations were not justified and they more heavily burdened Latinos." (2011 Tr. Vol. 1 at 249).

10. Dallas County grew more slowly than the state, losing 2 House seats to drop from 16 to 14. Over the decade, the Anglo population declined by 198,000, Hispanics grew by 243,211; African-Americans grew by 73,016 and Asians grew by 30,302. Although Anglos comprise only 33% of the county population, under House Plan 283 Anglos would control 58% of the State House seats. (Martin Report, Joint Ex. 5.) The population deviation among Dallas Districts is an unjustified 8.8% and every Hispanic opportunity district is overpopulated. Minority opportunity

districts in East Dallas, such as district 102, were destroyed by relocating minority voting precincts to Anglo districts. (Korbel Report, Perez Ex. 133.)

11. One example in Dallas County of population manipulation to protect an Anglo Republican can be seen in the bizarre configuration of adjoining Districts 103, 104 and 105 in western Dallas County. District 103 is packed with an 80% minority population. The adjacent minority District 104, the most overpopulated district in Dallas county at plus 5%, is packed with a minority population of 85%. The State's explanation for this configuration is found in the testimony of witness Downton who testified "we wanted to make sure that we didn't leave Representative Anderson in a heavily Democratic 111 or 104, so we tried to draw him into 105. (2011 Tr. Vol. 4 at 927.) This is one of many examples of the State using population deviation to accomplish racial and political gerrymander.

12. House Plan 283 did similar damage to minority voting interests in the eastern portion of Dallas County. During the last decade, 3 majority-minority districts had rapid minority growth and elected the minority candidate of choice, including Districts 101 and 102. District 101 was eliminated and moved to Tarrant County. District 102 had an Anglo VAP of 43% at the end of the decade, and a Black-Hispanic VAP of 49.6%. H283 reversed those numbers by increasing the Anglo VAP in District 102 to 51.8% and dispersing minority population into adjoining districts. District 102 is underpopulated by 3.88%, while adjoining District 114, with a minority population of 44.6% is overpopulated by 2.80%. (Martin Report, Joint Ex. 5.) This intentional fragmentation of the minority community in northeast Dallas eliminated two effective minority districts which had previously existed in the area.

13. Over the decade, Harris County grew by 700,000. The Anglo population declined by 82,000 and now constitutes 33% of the county total. Over the same period, Hispanic population

grew by 552,000, African-Americans grew by 134,000 and Asians by 76,827. Harris County districts have a deviation of 9.88%. (Martin Report, Joint Ex. 5.) The plan was drawn by the “Republican Delegation of Harris County.” (Interiano, 2011 Tr. Vol. 6 at 1474.) Democratic members of the Delegation were told they “could not touch the Republican districts.” (Downton, 2011 Tr. Vol. 4 at 934.)

14. Further evidence of discriminatory purpose on the part of the State is found in HD 132, an area of rapid minority growth in western Harris County. At the end of the decade, the District was significantly overpopulated and needed to shed population. As of the 2010 Census, the District had a combined Black and Hispanic VAP of 47.5% and an Anglo VAP of 43.8%. Rather than preserve the minority community intact, H283 moved much of the minority population out of the District and brought in Anglo population from HD 130, with the result that the combined Black and Hispanic VAP fell from 47.5% to 45.5% and the Anglo VAP increased from 43.8% to 46.8%, a meaningful 5% shift.

15. Tarrant County grew by 362,815 persons over the decade and minority population accounted for 89% of that growth. Tarrant County added one new legislative seat but H283 did nothing to improve minority opportunity in the Tarrant House plan. The plan contains a nonsensical population deviation of 6.73% with District 90 being the most underpopulated district in the state. The discriminatory treatment of the minority community in the redistricting process is evidenced by the treatment of Representative Veasey, an African-American member of the House Redistricting committee. Representative Veasey testified that his House District 95 which he had previously approved, was changed by the House Committee without his knowledge or approval.

16. Preexisting District 93 had a 55% Black and Latino voting age population and a 37.9% Anglo VAP and had in the past elected the minority candidate of choice. (Perez Ex. 133 at 13-4.). The new District 93, contained in H283, resembles a giant boa constrictor and drops the combined Black and Latino VAP to 34.5%. Although the new District 101 is a minority opportunity district, in fact what has occurred is the destruction of District 96 as a minority opportunity District. This was accomplished by removing Arlington and Fort Worth minority population from 96, and by packing minority population into Districts 101 and 95. In previous years, District 96 had elected the candidate of choice of the minority community as state representative, which is now foreclosed by these changes. (Martin Report, Joint Ex. 5.) As the Korbel report demonstrates, the fish hook District 93 “plucks several heavily minority precincts from the mid cities area” and ties them to the northern portion of county, preventing formation of a minority district. Although the new District 101 is a minority opportunity district, this is necessitated by the 300,000 minority increase in the county.

17. Fort Bend County grew by 232,923 persons over the decade, with significant minority growth. Anglo population is now 38% of the county, yet under H283, Anglo voters would control 71% of the 3.5 districts allocated to Fort Bend. This misallocation is the result of an intentional splitting of the counties’ minority population between 3 districts, 26, 28 and 85, leaving only District 27 as a minority opportunity district. (Martin Report, Joint Ex. 5.)

18. Hidalgo County District 41 contains every imaginable constitutional and statutory deficiency. It was drawn along racial lines to save a Republican legislator. (Downton, Tr. Vol. 4 at 1003.) It produced a deviation in clear violation of *Larios* principle, being underpopulated by 7,399 persons while its adjoining district was overpopulated by 5,856 persons.

19. As an outgrowth of the second round of the *Graves* litigation, *Graves v. Barnes*, 378 F. Supp. 640 (1974), McLennan County was divided into 2 legislative districts. One of those districts, District 57 in the bench mark plan, was originally drawn to encompass basically the entire minority community of McLennan County. As established in the Korbel Report (Perez Ex. 133-134), that district survived through successive redistricting cycles until the 2011 redistricting. Historically, the District had elected the minority candidate of choice until the 2010 election. The current plan fragments this existing minority community in Waco by removing 23,000 people from the existing district, 70% of whom were minority and replacing them with 20,000 new persons, 80% of whom were Anglo. (Korbel testimony, 2014 House Tr. Vol. 4 at 1444.) The effect of this change “cracked the minority voting strength” (*Ibid*), with no justification and rendered the district no longer a minority opportunity district.

20. The State’s treatment of Bell County resembled their action in Waco. The city of Killeen is basically Fort Hood, our largest military establishment and contains a substantial minority community. Under the bench mark plan, “virtually the entire city of Killeen” was in District 54, all except for some annexed areas containing some 200 people. The redistricting plan took some 32,000 people, two-thirds of whom were minority, out of Killeen and imported 46,937 people who were 60% non-minority. (Korbel testimony, 2014 House Tr. Vol. 4 at 1404.) The effect was to seriously weaken an effective minority voting coalition in Killeen.

21. The State has conceded the existence of racially polarized voting throughout the State, contesting its existence in only 2 counties, Nueces and Kleberg. (2014 Congressional Tr. Vol. 7 at 2168-2170.)

22. The reduction of the number of seats allocated to Harris County from 25 to 24 was effectuated by Representative Woolley without input from any of the minority members. She

explained to Representative Coleman that the drop “makes our districts stretch further in terms of the limited number of Anglo votes that there were.” (2014 House Tr. Vol. 4 at 1304-1305.) The reduction from 25 seats to 24 in Harris frustrated the creation of additional minority opportunity seats in Harris County.

23. Under the 2010 census, the combined population of Cameron and Hidalgo counties was sufficient for 7 ideally populated districts. The creation of those districts could have been accomplished by a single cut of the county line between Cameron and Hidalgo counties. Contrary to the county line rule, the State opted instead for additional cuts tying Hidalgo in with Starr and Zapata counties in District 31 and tying Cameron in with Willacy, Kleberg, Kennedy, Jim Wells, and Brooks counties in District 43.

Respectfully submitted,

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